

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JARED ANDREW MARTIN,

Petitioner,

v.

TYSON J. POGUE,

Respondent.

No. 1:22-cv-01113-JLT-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. 6)

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS, DIRECTING CLERK
OF COURT TO ENTER JUDGMENT AND
CLOSE CASE

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

The assigned magistrate judge issued Findings and Recommendations to dismiss the petition as premature. (Doc. 6.) Those Findings and Recommendations were served upon all parties and contained notice that any objections thereto were to be filed within 21 days after service. On September 12, 2022, Petitioner filed objections to the Findings and Recommendations. (Doc. 8.)

According to 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's objections, the Court concludes that the Magistrate Judge's Findings and Recommendations are supported by the record and proper analysis. Petitioner's objections present no grounds for questioning the Magistrate Judge's analysis.

1 In addition, the Court declines to issue a certificate of appealability. A state prisoner
2 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
3 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
4 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a certificate of
5 appealability is 28 U.S.C. § 2253, which provides as follows:

6 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
7 district judge, the final order shall be subject to review, on appeal, by the court of
appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

11 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

12 (A) the final order in a habeas corpus proceeding in which the
13 detention complained of arises out of process issued by a State
court; or

14 (B) the final order in a proceeding under section 2255.

17 (3) The certificate of appealability under paragraph (1) shall indicate which
18 specific issue or issues satisfy the showing required by paragraph (2).

19 If a court denies a petitioner’s petition, the court may only issue a certificate of
20 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
21 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
22 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
23 been resolved in a different manner or that the issues presented were ‘adequate to deserve
24 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting
25 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

26 The Court finds that Petitioner has not made the required substantial showing of the denial
27 of a constitutional right to justify the issuance of a certificate of appealability. Reasonable jurists
28 would not find the Court’s determination that Petitioner is not entitled to federal habeas corpus

relief debatable, wrong, or deserving of encouragement to proceed further. Thus, the Court declines to issue a certificate of appealability. Accordingly,

1. The Findings and Recommendations issued on September 16, 2022, (Doc. 6), are adopted in full.
2. The petition for writ of habeas corpus is dismissed.
3. The Clerk of Court is directed to enter judgment and close the case.
4. The Court declines to issue a certificate of appealability.

This order terminates the action in its entirety.

IT IS SO ORDERED.

Dated: **September 14, 2022**

Jennifer L. Thurston
UNITED STATES DISTRICT JUDGE